

I think it is also a fact when the change was made, it was then said there would be a hold-harmless from the change in staff allocations so that we actually added budget to allow all the staff to stay on from both parties. So I think now that we are at the beginning of a Congress, you can argue we have to have certain levels of funding on the majority side for the administrative functions of a committee. You have to put out the notices, you have to pay for certain witnesses to come to your committee, you have to do the printing of the bills and the printing of the statements. There are administrative costs.

So I think the majority has to have some lead to be able to function as a committee. I think that also is the precedent for the Senate. I do think we will be talking about this to determine what is fair. But even if you said there is a disagreement between two-thirds/one-third and 50/50, and maybe you go to 60/40, or maybe you don't, nevertheless, there is nothing that would not allow us in the next 30 minutes to have a unanimous consent resolution that would say the committees will be formed, the appointments will be made, they will be able to function, and we will fund them at a certain level until we have a final agreement.

The key is the people of America deserve the business of our country to go forward. We can offer them the excuse that we cannot decide between two-thirds/one-third and 50-50 and, therefore, we are holding everything up, but I do not think that excuse holds water.

I believe we ought to move forward. Let our committees convene. Let's work this out. This is a body of 100 intelligent people. We can work it out if we agree that we are going to all sit down and negotiate in good faith, but I do not think we ought to hold up the business of the people of this country for another week or a week after that. We were sworn in on January 7. We have been unable to have a committee hearing to confirm the Secretary of Homeland Defense so he can start the planning for his agency to protect this country.

We had to cancel a hearing for the Chairman of the Federal Reserve Board to speak to the Budget Committee because we cannot form our committees. That is not what the people of our country expect, it is not what they deserve, and I do hope we can, in a very short order—tonight or early in the morning—have the cooperation of the Democrats to go forward and do the business of the country.

Let our committees be appointed. Let our work begin. Let's have a hearing this week for the Secretary of Homeland Defense. Let's have the Federal Reserve Board Chairman come to the Senate and talk about the state of our economy. We need to hear from him. The least we can do is form our committees and allow the business to go forward. We can talk about 60-40 or 67-33 or 50-50 for the next month and

not hold up the business of the people of our country.

I urge my colleagues to work with us to do that. I thank the Chair.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Mr. President, I simply say in response to my friend from Texas that the hearing could have gone forward. There is no reason for the hearing not to go forward. Senator LIEBERMAN, or someone else, would have conducted the hearing. No one I know opposes the proposed nominee for this new Cabinet office. It would have been a very quick hearing. It is not as if a hearing could not have gone forward. The majority chose not to go forward with the hearing. That is a choice they made, not a choice we made.

I further say to the Senator from Texas, or those within the sound of my voice, once you turn over the chairmanship of these committees and have the committee people assigned to the committees, we simply lose any authority we had. Fairness dictates that if the Senate was divided last time 51-49 with the Democrats in the majority and it is divided 51-49 with the Republicans in the majority, the committee structure should be the same. That is what we are saying it should be, and we are going to hang tight until it is that way. That is the way we think it should be.

Other Congresses have joined together and worked out their differences. We have to do that. The only way we will do that is if we agree on 51-49 having the same value it did a few months ago.

The PRESIDING OFFICER. The assistant majority leader.

Mr. MCCONNELL. Mr. President, as the Senator from Texas pointed out, except for the extraordinary circumstance in which the Senate found itself—50-50—for the first time since the 1880s, the issue of committee funding was not dealt with by the full Senate. The only issue that was dealt with by the full Senate was the appointment of the committees. For 1 week now, the Senate has been in the majority of the Republicans, and yet there is not a single Republican committee chairman. New Members of the Senate, such as the occupant of the Chair, do not yet have committee assignments. He has been a Senator, I say to the Senator from Minnesota, for almost a week now, and he is not yet on a committee.

What the Senator from Texas has been saying—wholly aside from this debate over what the committee funding should be, which is typically not dealt with by the full Senate anyway—there is no rational basis, no equitable basis for not ratifying the results of the election last November by letting the new Members of the Senate and, for that matter, the old Members of the Senate who are going to new committees, have those committees ratified and the chairmen and ranking members selected. That is what I believe the Senator from Texas was saying.

I do not have the exact facts in front of me, but I understand this is the latest, certainly in recent Congresses, after the beginning of a Congress that we have, in effect, ratified the results of the election.

Last Tuesday, the Senator from Minnesota was sworn in. It has been almost a week; he is not on a committee yet. We do not have any committee chairmen. It is not enough to suggest that the minority ought to hold the hearings about which the Senator from Texas was talking. The minority does not hold hearings; the majority does. That is the tradition of the Senate. That tradition should be honored, and we should not delay passing the committee resolution pending the outcome of this ongoing discussion about what the committee funding ratio should be.

I think the Senator from Texas makes a compelling and irrefutable point about the need to start doing the people's business. We did not pass 11 of the 13 appropriations bills last year. They have not been done yet. We cannot have a meeting of the Appropriations Committee to get started on trying to pass those 11 bills because we do not have a chairman. The committees have not been organized. Let's at least get that job done, as the Senator from Texas points out, and we can continue—I assume at the rate we are going indefinitely—to discuss what the appropriate funding ratios should be.

We are holding up the people's business. We are not honoring the results of the election Tuesday, November 5. We need to get on with it, and tonight or tomorrow would be a good time. I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE REORGANIZATION

Mr. REID. Mr. President, I know the majority leader is on the floor and I will be very brief.

A couple of times this afternoon people have talked about the 11 appropriations bills that did not pass last year, but the RECORD should be spread with the fact that the Senate completed its work on the appropriations bills. We reported every bill out of committee, but even before the summer hit the House closed down and would not send us any bills. So that is why the appropriations bills were not passed.

We did everything we could to try to get those bills passed and the Republicans in the House simply would send us no bills. We asked the White House, we asked the Republican leadership and they simply would not help us, so we were not to blame for the bills not passing. That was something that was

done by the Republicans in the House and in the White House.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I will take a moment and update Members of the status of the committee resolution. I know we have had a discussion and some debate of this on the floor, both in the last hour and earlier today.

I will reassure my colleagues that we have been working in good faith to try to resolve the outstanding issues which would allow us to go forward and do something that is very fundamental to the operation of this body, in fact necessary for us to go forward with the nature of the business. It is what the Senate is all about.

We do have 11 new Senators who simply are not on committees, who do not have the opportunity to fully participate in that process as we look at the issues surrounding us, whether it is war, homeland security, or the funding of the appropriations bills that were just mentioned.

I remind my colleagues on both sides of the aisle that normally this so-called committee resolution is adopted in the first day or two of the session with very little fanfare. Again, we are talking about after an election, when there is a clear-cut majority based on that election, that we appoint the committees and their chairmen, which is really what we are talking about. That allows us to proceed with the important business before the Senate.

It was mentioned earlier in the day that the precedent has been set to go beyond what we would like to do and that is address committee membership so that we can begin with the hearings and the discussion. It was mentioned that the precedent has been set that we include a range of other issues, such as committee funding and space. I remind my colleagues—and I have had an opportunity to do that with a number of them today but not everybody—that the precedent in Congress after Congress, when we begin with a clear-cut majority based on elections, is the traditional practice of limiting these resolutions, usually carried out in the first couple of days, of naming committee members.

Some Members have mentioned the agreements of the 107th Congress as the precedent or the basis where we have to consider all of these other issues. Let's not forget that the 107th Congress was a unique Congress, unlike the Congresses before, in that in that Congress we had 50-50, something that neither side had fully addressed or thought about because it had not occurred in a generation or so of this body.

That being the case, and very appropriately, this committee resolution did address other issues such as space and the other issues that were mentioned today. But it is not 50-50 beginning this Congress. This is not the 107th Congress; it is the 108th Congress. The American people spoke very clearly in

the most recent elections and provided for a majority—yes, in this case a Republican majority.

Again, I hope we can proceed. I think we have made real progress in all of our discussions, but now is the time we need to come together and get on with the Nation's business. Therefore, I hope we can proceed in the traditional manner that when we begin a Congress and there is a clear-cut majority based on the elections that we pass the committee resolution, establish the committee membership and their chairmanships and move towards working on the issues that are important to the American people: security of the homeland; we have important nominations that have to do with homeland security. Until we get the committees actually set up and established, Members, such as the Member occupying the Chair, do not sit on any committees and cannot fully participate. They cannot vote because they are not on that committee yet. That applies to the appropriations bills as well.

We are trying to finish the business from the last Congress, which because of the indecision and a whole range of issues we were not fully able to address in the 107th Congress. Now we are working very hard, in a bipartisan way, on these so-called appropriations bills or spending bills. The American people at this juncture really expect no less of us. If it is not confusing now, it is going to get very confusing as to why we cannot even name the committees and their chairmen.

The American people do not want a continuation of an inability of this body to function, to carefully consider the appropriations bills and the nominations through the committee structure.

I have been keeping an open mind and in truth have really encouraged Members on our side of the aisle to not come out and say we should move forward because we are in the majority. I have encouraged them to sit back and let the negotiations continue. Over the last 7 days, we have addressed this whole range of issues and have felt obligated to extend, at least in our discussions, beyond just naming the committee members and chairmanships and to talk about space. We talked at length about other committees and the way particular committees should be organized and the space both within the Capitol and among the committees.

We have worked in good faith and we have worked productively on a whole range of issues.

Having said that, we need to proceed with the business of the Senate, and what I have observed today is that we are unable to adequately address appropriations, the nominations for the Treasury which the President has addressed and the 31 nominations of the judiciary, with vacancies around the country, which we really cannot address until we do something very simple, and that is appoint who is on the committees, which we have already de-

cided, by the way. The American people should know we have already decided who is going to be on these committees and who the chairmen are.

Having said this, I need to put everyone on notice that if an agreement is not reached shortly—and we will be working through this evening as we have throughout the course of today—if we do not reach an agreement shortly—and by that I mean very soon, very soon—I will be moving forward with the committee resolution. The resolution is simple: That is, who is on the committees, which has already been decided, who those chairmen are.

This may or may not delay the consideration of the appropriations package of fiscal year 2003. My goal had been that we do what is normally done in the Congress in the first several days: Appoint committee chairmen and systematically address the appropriations bills left over from last year. Now we are 1 day into this week and we have not made progress sufficiently in negotiations to be able to appoint those committees. I am beginning to think we are not going to be able to complete those appropriations bills this week—again, business left over from the last Congress.

In any event, the Senate will not adjourn for a recess next week unless and until the Senate completes these two items. The very basic one, appointing who is on committees, that has already been decided. Again, we need to come to that very quickly. The other item is the appropriations. Great progress has been made. But until we have the committee structure in place, we have a chairman at that juncture and we have 11 Senators, who have been duly elected, able to participate in that process, as I have said previously, we will remain in session to get our work done. What we will do if we do not make adequate progress is return next week, on Tuesday, after the holiday and remain in session each day and evening until we can complete both of these must-do items.

I yield to my colleague.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I appreciate the distinguished Republican leader, the majority leader's explanation to the Senate as to the current circumstances involving the organizing resolution. I have been through a number of these resolutions over the time that I have had the good fortune to be leader. I share his view that oftentimes these matters do not require a great deal of attention. I wish this would not require the time that it has. I am very hopeful we can resolve these matters. He and I have talked. Our staffs have talked. He has consulted with his chairs. I have consulted with 9 Democrat ranking members, currently the chairs, because they are the chairs until a new resolution has been incorporated. I have said on several occasions, to him personally as well as to my colleagues, that I will do all I can

to see if we can find a way to resolve the matter.

Let me respond to a couple of things on which the distinguished majority leader commented. First of all, while there have been occasions when a two-thirds/one-third funding breakdown has been the order of the organizing resolution, in the last Congress, in the 107th Congress, there were 51 Democrats and 49 Republicans. As he noted, it started at a point where there were 50 and 50. As we negotiated the resolution under a 50-50 Senate, we attempted to address what happens when you have membership in committees that is equal. We came to the conclusion that there is a significant budgetary, a significant practical space consideration to be given when you have membership on committees that close. There are times when, obviously, the disparity between the two parties and membership would reflect a need that also is commensurate budgetarily and in space, but with a 51-49 or a 50-50 Senate, clearly the budgetary, the staffing, the space questions become more relevant. That was really what our discussions were when we moved from 50-50 to 51-49 last spring. In fact, I would say as I negotiated with, I believe, five senior members of the Republican caucus, the issue of funding and the issue of space were not even at question. At that point, it was more a question of a blue slip and a number of other what I call extraneous matters that we attempted to resolve: How do we deal with judge-ships? How do we deal with the question of a blue slip; that is, a Senator's prerogative to sign off on a nominee before it comes before the committee. That was the subject of discussion—not the funding, not the space.

So it was after several weeks of negotiation—and I emphasize weeks, not days—that we had to move back the time that officially we became the majority on committees by about 6 weeks. During that time, obviously, I would have preferred to have moved much more quickly, but we were unable to do that—again, not because of space and not because of budget but because of the question of blue slips.

When we did pass the resolution with a 51-49 breakdown in the Senate, we passed it with a recognition that those budgets and that space and those questions pertaining to membership on committees were as relevant with 51 Senators as they were when we had 50 Senators.

So the Senate established a precedent that was practical, that was in keeping with the functional responsibilities of the two parties and each committee. Again, I would emphasize, it passed unanimously, 51 to 49, virtually equal budgets, with an administrative bonus for the chairman to be allocated as that particular chair and ranking member saw fit. We lived under that resolution. It worked.

Now we have the reverse, the mirror image of that, 51-49, the same breakdown we had just a month ago. Yet

some of our Republican colleagues are saying they want a budget that is dramatically different, a huge disparity, once again, between the Republican funding and the Democratic funding. If it was good for both parties in the last Congress with 51-49, we are simply saying it is good for this Congress. We are prepared to go to work tomorrow. We are prepared to move this legislation, and I want very much to work with my Republican colleagues and the majority leader to take up these priority matters. In fact, I said last week to the President, we do not need a new organizing resolution to do the work of the Senate. Sure, it would accommodate the new Senators, and we would like very much to get that done. But the Senators heard what I heard from the President just last week at our meeting. The President said it is urgent we move these nominations. It is urgent we take up some of these priorities. I indicated at that time we would be more than happy to move these nominations.

The Snow papers just arrived today, so it is not the fault of the Congress that we have not been able to hold hearings or confirm the Snow nomination. But with regard to all nominations, the Ridge nomination was supposed to be the subject of hearings tomorrow. I understand that was canceled. I am disappointed, in spite of the urgency expressed by the administration; their unwillingness to move ahead with the hearings sends a conflicting message with regard to just how urgent it is. We are prepared with whatever circumstances to deal with the nomination and to deal with these issues.

It is hard for me to understand the logic or the rationale for reversing what was done unanimously not once but twice in the 107th Congress, which was done in a way that reflected the balance in committees, reflected the functional and practical needs of the committees. That is all we are asking now. If it was good enough for a 51-49 Senate a month ago, it ought to be good enough for a 51-49 Senate today.

I yield the floor.

The PRESIDING OFFICER. The majority whip.

Mr. MCCONNELL. Mr. President, I would say to my good friend, the Democratic leader, I was one of those five Republican Members who were appointed by Senator LOTT to discuss with you how we would go forward in the wake of Senator JEFFORDS' decision to leave us and to come over to your side. Your recollection is entirely correct. The reason for the delay was a discussion of how to handle the judges and the whole blue slip policy.

But on the issue of staffing, my recollection is the reason we had almost no discussion of that is that we didn't want to, in the middle of a Congress, disrupt the lives of a number of staff members on both sides who had signed on for 2 years. I think we all believed this was such an extraordinary

circumstance, we didn't want to be sending out pink slips a mere 5 or 6 months into a new Congress since a lot of people had been hired for the Congress and were depending on this for a livelihood.

So my recollection of the reason we spent little or no time talking about changing the staffing was the compassionate decision, bipartisan compassionate decision, not to disrupt the lives of a great many members. I had no recollection that we discussed this to be sort of a permanent notion about how we would handle a 51-49 Senate at the beginning of a Congress. I have no recollection of that.

I just thought I would add my own thoughts to the Democratic leader's, having been a part of that discussion.

Mr. DASCHLE. Mr. President, if I could just respond quickly, and I don't want to belabor this, but I would say actually that was my belief, too—that we wanted to hold our Republican colleagues harmless, if you will, if that is the right phrase; in other words, to accommodate their staff.

But I think that the logic, again, ought to be extended. If that was the case, that we wanted to show some compassion for staff, we wanted to send a clear message about our intent to work in a meaningful and a bipartisan way, it would seem to me under a 51-49 Senate last time we made the decisions that the Senator from Kentucky has noted; we did so with an understanding about the disruption it would cause.

That isn't my first concern in this case, but it is a concern. I would think those staff would have every bit as much of an expectation now that they had a year ago—I guess it would be 2 years ago, in May—that certainly some continuity, some degree of certainty under these circumstances could be expected, given what we did before.

So I appreciate very much the Senator commenting. We will have more to say about it as time goes on.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I am ready to close. Let me yield 3 minutes to my colleague from Texas.

Mrs. HUTCHISON. Mr. President, I would just like to ask a question. We are sitting here talking about percentages and funding of committees. Why can't we just agree to set up the committees, appoint the chairmen, let them function, and decide on the percentages later? The people of America deserve for us to do their business. We have been organized for a week, but we don't have committees functioning and we don't have chairmen. The idea that we would sit here and hold the entire Senate, all the employees here, when we cannot have committee meetings and begin to do the work, just doesn't pass the smell test. I mean it is just ridiculous.

So I would ask the distinguished leaders on the Democratic side if they would allow us to draw up a resolution tonight—we could do it in 30 minutes—

organize the committees, let us appoint the chairmen, and we can talk about the funding later. We can agree that we will go forward. Since the appropriations bills have not been passed and the legislative branch is operating on the 2002 budget, let's go forward and organize, and we can deal with the money later. That is what I ask.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I just want to close and say that we have worked together, both sides of the aisle, aggressively over the last week. I do believe it is time for us to, as much as possible, bring this to a close, at least in terms of getting our committees set up and running.

I am ready to close unless my colleague has anything to add.

Mr. REID. I would just briefly say to the leader—I appreciate his courtesy in allowing me to speak—we waited 6 weeks last time. I was part of the wait. I understand how long it took. It may have been over blue slips or something else, but still the organizational resolution was held up for 6 weeks. I hope that isn't the case this time. I hope we can work it out more quickly. There has been a lot of debate on both sides. It has clearly been spread on the record of the Senate what the respective positions of both sides are.

Mr. FRIST. Mr. President, in closing, we have a lot of work to do. We got off to a good start last week with the unemployment insurance. We are making progress in terms of negotiations. But—and I mentioned this a few moments ago—the two issues that we have to address, as we look forward to this potential recess 8 or 9 days from now, are: The basic organization of the Senate, simply getting the committee assignments made; second, appropriations. And if we do not complete them, we will be back during the week, after the holiday.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred October 25, 2001 in Dumfries, VA. Two Afghan-American teenagers were beaten by a group of attackers. Police said that April Scruggs, 42, and her son, Jarvis Berkeley Wilhoit, 19, had been taunting the victims for more than a month prior to the beating. Wilhoit and a group of friends approached the victims, who are brothers ages 16 and 17, and began hitting them. Scruggs joined the fight and hit the 17-year-old in the head with a wrench.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

INVESTORS ARE KEY TO ECONOMIC GROWTH

Mr. KYL. Mr. President, on January 7, I reintroduced the "Contract with Investors," which proposes a number of changes to the tax code to spur investment and encourage economic growth and job creation.

Investment, especially by individuals, is the lifeblood of the U.S. economic system. They key to fostering robust economic growth, rather than the anemic growth we are seeing right now, is to eliminate the disincentives, the high tax rates, that discourage individuals from investing. Once individual investors return to the stock markets, or are encouraged to start up, or invest in existing, small businesses, we will get the growth that creates new, good jobs.

The first element of my proposal repeals from the 2001 tax-relief law the sunset provision that was required by arcane Senate budget rules. The prospect of taxes reverting back to their 2001 levels in 2011 sends a signal to businesses and investors that tax increases are in their future, and this dampens investment. Furthermore, a dramatic tax increase in 2011 will devastate our economy.

Next, I propose to accelerate the remaining marginal rate reductions from the 2001 law, moving the 2004 rate reductions to this year and the 2006 reductions to 2004. Lowering these rates benefits all taxpayers, and is the key to encouraging individuals to invest and take the economic risks that will create jobs. In our progressive income tax system, the marginal rate is the rate at which a person's last dollar of income is taxed. This means that a person who works harder and longer and earns more has those additional earnings taxed at the highest rate for which he or she qualifies. Reducing marginal rates encourages taxpayers to work harder and longer because they will not be taxed as much on that extra income. On the same principle, it makes sense to accelerate the planned tax-rate reductions. Phased-in reductions give taxpayers an incentive to put off income-producing activity into the future, when rates are scheduled to be lower. Accelerating the reductions gives taxpayers the incentive to engage in that income-producing activity immediately.

This also gives quicker relief to small businesses, which are typically taxed not at corporate, but at individual rates. Small businesses account for most new jobs and half of the output of our economy. Currently, the

maximum income tax rate for C corporations is 35 percent; once the individual rate cuts are fully implemented, the top tax rate for individuals will also be 35 percent, instead of the current 38.6 percent. This will eliminate a penalty unfairly imposed on small businesses and enable them to expand and employ more workers.

The next element of my plan accelerates to 2005 repeal of the death tax, the estate and generation-skipping transfer taxes. The death tax is unfair and counterproductive and it must be permanently eliminated. A 1998 study by the Joint Economic Committee concluded that the existence of the death tax during the last century has reduced the amount of investors' capital in the economy by nearly half a trillion dollars. The same study estimates that, by repealing the death tax and putting those resources to better use, as many as 240,000 jobs could have been created over seven years and Americans would have had an additional \$24.4 billion in disposable personal income.

In 2001 testimony before the Senate Finance Committee, Dr. Wilbur Steger, the president of Consad Research Corporation and a professor at Carnegie Mellon University, testified that immediate repeal of the death tax would provide a \$40 billion automatic stimulus to the economy, based on estimates of the amount of net unrealized capital gains that would be "unlocked." Many Americans choose to hold on to their assets until death in order to obtain for their heirs a "step-up" in basis. Getting rid of the death tax will encourage Americans to sell assets before death, hence my term "unlocking." Repeal also removes the strongest disincentive to business investment and expansion that faces older business owners. After all, why would people in their golden years expand their businesses, when the federal government is poised to confiscate a large share upon their death?

Under current law, the death tax will go down to zero in 2010 but reappear thereafter, at exorbitant 2001 levels, thus adding significant complexity to future death tax planning, increasing costs that are a drag on economic activity, and retreating from a principled rejection of this unfair tax. This is unacceptable. Until the death tax is gone, family business, farms and ranches must still pay for expensive life insurance policies, death tax planners, and tax attorneys. These expenses, wasted resources that could be put to much more productive use, total more than \$12 billion a year, according to Consad Research Corporation. My bill would, as I said, permanently repeal the death tax in 2005, thus allowing all Americans two years to plan for a future in which the federal government no longer taxes the death of its citizens.

The Contract with Investors also addresses capital gains. It provides for maximum taxation of individual capital gains at a rate of 10 percent, which is half the current rate. Ideally, this